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No. 83-1935

In The
Supreme Court of the United States
October Term, 1984

TONY AND SUSAN ALAMO FOUNDATION, TONY ALAMO, SUSAN ALAMO, AND LARRY LAROUCHE,

Petitioners,

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITIONERS' REPLY BRIEF ON THE MERITS

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STATEMENT OF THE CASE

Before replying directly to the Secretary's Argument and the Amicus Curiae Brief, the petitioners desire to bring to this Court's attention several misleading assertions found in the "Statement" of the Brief for the Respondent-Secretary.

The Secretary made the following statement: "Evidence regarding the number of hours worked by the associates varied, but, as the District Court noted (Pet. App. 9), witnesses 'testified that they were required to work as long as 12 to 15 hours per day, 6 or 7 days per week'." (Resp. Br. 8.) In the context of this statement, the Secretary obviously attempts to imply that the District Court found that the associates worked 12 to 15 hours per day, 6 or 7 days per week. This statement is extremely misleading as the District Court rejected such a position and specifically found:

> The figures of 10 hours per day, 6 days per week were elicited from *former* associates in response to leading questions on depositions. (Appendix A, App. 9, of Petition for Writ of Certiorari, hereinafter referred to simply as "Appendix A".)
>
> . . .
>
> [I]t is not reasonable to conclude that all of the adult associates are working in commercial business, or, that the ones who do work in the commercial business do so on the regular basis suggested by the Secretary. (Appendix A, App. 10.)
>
> . . .

The Secretary also asserts in his "Statement" that "the Foundation businesses were staffed primarily by some 300 associates". (Resp. Br. 7.) The record does not support this position, and the same was specifically rejected by the District Court. As stated in its *Memorandum and Order*, the District Court held:

[T]*here is no basis for concluding, as the Secretary suggests, that all 300 of the associates worked in the Foundation's commercial businesses. To the contrary, the evidence reflects that the associates have constructed, decorated and furnished a number of residences, an apartment building, a church, and various other structures used by the Foundation and its associates for non-commercial purposes.* The labor for much of this construction and the continuing maintenance of the structures was furnished by the associates. As previously mentioned, some associates work at the Foundation in non-commercial jobs, such as babysitting at the nursery, cooking for the other associates, etc. Furthermore, the Foundation produces a television show which obviously requires some non-commercial work time; some associates "witness" on the streets, in hospitals, jails and other places; and some help organize new churches. *Additionally, some associates are employees of businesses other than the Foundation's and simply turn their paychecks over to the Foundation.* (Appendix A, App. 9, 10.) (emphasis ours)

It should also be noted that to develop his "Statement", the Secretary relies heavily upon the deposition testimony of *former* associates. With regard to these former associates, the District Court made the following finding: "Some of the witnesses who testified by deposition were former associates who had become disillusioned with the Foundation and Tony Alamo." (Appendix A, App. 7, footnote 3.) These former associates were bias to the point of absurdity. For example, and as the Secretary points out, one former associate stated sewers in the sewing room would "frequently work three or four days straight in a row without any sleep or even a break". (J.A. 121-122.) Not only do these statements suggest the physically impossible, but they are contradicted by the testimonies of the representative associates. One, in describing the sewing room, stated: "And as far as people

sewing all night and all day, they had a little sewing deal where the girls would sew some quilts and things like that. It was just like a little sewing circle that the girls did." (J.A. 50.) This associate went on to say that what was sewn in the sewing room was primarily for the associates of the Foundation or the poor. (J.A. 50.) Another representative associate stated that the sewing room was where someone would go if they "wanted to do some personal sewing, make an Easter outfit for their children" or if they wanted to "show people how to put in a zipper and how to cut out patterns and that sort of thing". (R. Vol. II, p. 148.) The record also reflects that the former associates testifying upon behalf of the Secretary were the same individuals who had wrongfully accused the Foundation and Tony Alamo of criminal conduct in the preparation of various tax forms. (R. Vol. 1I 202, 203.)[1] The Secretary's reliance upon the testimony of the former associates is clearly misplaced. As the District Court stated, the former associates "had become disillusioned with the Foundation and Tony Alamo". (Appendix A, App. 7, footnote 3.)

Furthermore, the Secretary states: "As Tony Alamo has acknowledged (J.A. 92-93), 'numerous' families were 'dependent' upon these benefits provided by the Foundation for their substance." (Resp. Br. 9.) The record contradicts such statement. When Tony Alamo was asked: "And these families are depending entirely on their substance from their association together in the Foundation and the church of Tony and Susan Alamo Foundation?" (J.A. 93), he replied: "As they have testified, some of

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[1]The allegations made by these former associates were found to be false by the Internal Revenue Service. (R. Vol. II 202, 203.)

them go out on outside (p. 199) jobs to help provide for everyone there." (J.A. 93.)

Moreover, in response to the Secretary's argument that the associates were totally dependent upon the Foundation, we remind the Court that of the three representative associates, all worked in jobs outside the Foundation or had outside sources of income. (J.A. 51, 72 and R. Vol. II, p. 170.) Furthermore, most of the former associates worked in jobs outside the Foundation.

In addition, the record is clear that the so-called "businesses" of the Foundation continually operate at a loss. (R. Vol. II, p. 200.) The primary purposes of the continued operation of the "businesses" or activities of the Foundation are to provide a forum for rehabilitation for various associates who were addicted to drugs or who were engaged in criminal activity prior to their association with the Foundation and to provide a forum for the sharing of their religious beliefs. As found by the Court of Appeals for the Eighth Circuit: "The organization's evangelical work has been carried on among derelicts, drug addicts, and criminals. As part of their rehabilitation, they perform useful work in the thirty-some commercial businesses operated by the Foundation." (Appendix A, App. 49-50.)

Further, the Secretary premises various arguments upon his assumption that receipt of benefits is conditioned upon labor in the Foundation's commercial establishment. (Resp. Br. 35.) This assumption is contrary to the evidence. As found by the District Court: "[I]t is not reasonable to conclude that all of the adult associates are working in the commercial businesses, or that the ones who do work in the commercial businesses do so on the regular basis suggested by the Secretary." (Appendix A,

App. 10.) The representative associate, Ann Elmore, received benefits during her entire association with the Foundation despite the fact that she "did nothing but read the Bible and pray [and] . . . go out in the streets and witness and testify [during her] . . . first five years" with the Foundation. (J.A. 73.)

The record is also clear that the Foundation provides benefits to those who are mentally unable to perform services in commercial ventures (e.g., "feeble minded" and "retarded"). (R. Vol. II, p. 188.) Moreover, the benefits are received by those who are engaged in evangelical activities only (J.A. 49, 56, 57, 73.) Consequently, the receipt of benefits *is not* conditioned upon labor performed in the so called businesses.

The Secretary's "Statement" is replete with inaccuracies and misleading statements. For a further example, in his "Statement", in an attempt to partially conceal the true extent of the District Court's Order, the Secretary states that District Court held the application of the Act to be proper only regarding those associates who worked in activities that are commercial in nature. The Order of the District Court, however, applied the Act to "all persons who have been associates of the Foundation, or who have worked in any of the businesses of the Foundation. . . ." (Appendix A, App. 43, 44.)

Since the Secretary grounds his arguments upon these inaccuracies, this Court should reject the Secretary's position set forth in his "Respondent's Brief".

ARGUMENT

I. The Petitioner, Larry LaRouche, And The Other Associates Of The Foundation Volunteered Their Servies To The Foundation Without Expectation Of Wages Or Compensation In Any Form And, Accordingly Should Not Have Been Declared To Be "Employees" As Defined By The Fair Labor Standards Act.

Under this point, the Secretary fails to recognize the importance and the scope of *Walling v. Portland Terminal Co.*, 330 U.S. 148, 67 S. Ct. 639, 91 L. Ed. 809 (1947) wherein this Court excluded from the Fair Labor Standards Act "each person who, *without promise or expectation* of compensation, but solely for his personal purpose or pleasure, worked in activities carried on by other persons either for their pleasure or profit". *Id.* at 330 U.S. 152 (emphasis ours). The Secretary requests this Court to ignore the expressed "expectations" of the associates in determining their status as an employee or a volunteer. In a representative capacity, three associates of the Foundation were called to testify about whether they expected wages or compensation for their services rendered at the Foundation. Each unequivocally stated that he or she expected no wages or compensation in any form for the services they perform at the Foundation. The Secretary failed to produce any associate who would testify contrary to the three representative associates. (Appendix A, App. 7.) The associates' expectations were clearly established at trial. Yet, the Secretary ignores the testimony of the associates and attempts to substitute his judgment for the expressed expectations of the associates. The Secretary argues: "In determining whether individuals have truly volunteered their services, without any expectation that they will be compensated, the

Department considered a variety of factors. . . ." (Resp. Br. 4.) Certainly, the petitioners do not contend that circumstances surrounding the relationship of the associates and the Foundation should be overlooked; however, such circumstances should not be used to circumvent the expressed expectations and desires of the associates when such expressions are clear and reasonable. In effect, the Secretary is attempting to qualify the declarations of this Court in *Walling v. Portland Terminal, supra.*, by imposing his own standards of determining "expectations".

Under this point of Argument, the Secretary states: "It is fanciful to suggest that they [the associates] would —or even could—continue working such long hours (often 12-14 hours per day, six or seven days per week) in the Foundation's businesses if they were not being paid these benefits." (Resp. Br. 26.) No evidence was presented to show a work day of the nature just described above. The District Court rejected the same position asserted earlier by the Secretary. (Appendix A, App. 9, 10.) It was recognized by the District Court that the record reflects that the associates are involved in various non-commercial activities, such as constructing, decorating, and furnishing residences for the associates, a church, and "other structures used by the Foundation and its associates for non-commercial purposes". (Appendix A, App. 9.) Despite this evidence, the Secretary would have this Court believe that the associates work six to seven days a week, twelve to fourteen hours a day, in commercial activities. Every attempt has been made by the Secretary to undermine the religious and charitable aspect of the Foundation and its activities.

The Secretary asserts that the Court should disregard the expressed desires and expectations of the associates and should look to "objectively ascertainable facts"

in determining the "employee" question. The Secretary then directs this Court's attention to selective facts, which he feels supports his position. This argument is unfounded in law and is obviously self-serving. Assuming for the sake of argument that the Secretary's position is correctly stated, the petitioners bring to the Court's attention the following "objectively ascertainable facts": (1) None of the associates, former or current, personally sought a claim for compensation; (2) All of the former associates, at the time they were at the Foundation and working at the Foundation's "businesses", considered themselves volunteers; (3) all of the current associates consider themselves to be volunteers; (4) a large number of associates work "outside" the Foundation and receive paychecks from employers who are unconnected with the Foundation and any of its activities; (5) other associates have independent sources of income while at the Foundation; (6) many of the associates work in activities that are of a religious, charitable, and/or non-commercial nature (Appendix A, App. 9, 10.); and, (7) the associates receive benefits from the Foundation regardless of the nature of the work they perform. Thus, the associates' expressed expectations are supported by the facts surrounding their relationship with the Foundation.

Certainly, it cannot be questioned that the expectations and desires of the associates are relevant in light of *Walling v. Portland Terminal Co., supra,* and *Rogers v. Schenkel*, 162 F. 2d 596 (2nd Cir. 1947), both of which unequivocally hold that an "employee" as defined by the Fair Labor Standards Act must be a person who performs services with an expectation of compensation.[2] The in-

[2]The Secretary's attempt to distinguish the case at hand from *Turner v. Unification Church,* 473 F. Supp. 367, aff'm. 602 F.2d 458 (1st Cir. 1979) fails in that he simply states the holding in *Turner* "knows no support in the law". (Resp. Br. 26.)

tent of the associates is material to the question of whether they are "employees", and such should not be disregarded as the Secretary contends.[3]

The petitioners are not attempting to frustrate the purposes of the Fair Labor Standard Act by directing the Court's attention to the expectations and desires of the associates. They are merely emphasizing that the associates and their relationship with the Foundation do not fall within the scope or purpose of the Act.

The Secretary also contends that "the benefits [received by the associates] were conditioned upon the performance of revenue-producing labor". (Resp. Br. 28.) The record, however, contradicted such a contention. The record is clear that the "commercial enterprises" of the Foundation operate at a loss. The Foundation receives various public donations, though it does not solicit them. Furthermore, many of the associates derive income from working for outside employers. It is difficult, if not impossible, to see how the benefits offered are conditioned upon the performance of revenue producing labor when the funding of the Foundation comes from outside the Foundation and its "commercial ventures".

[3]In support of his argument that the Court must look beyond the understanding of the parties, the Secretary cites *Rutherford Food Corp. v. McComb,* 331 U.S. 722 (1947); *Goldburg v. Whittaker Cooperative, Inc.,* 366 U.S. 28, 33 (1961); *Real v. Driscoll Strawberry Associates, Inc.,* 603 F.2d 748 (9th Cir. 1979); and *Usery v. Pilgrim Equipment Co.,* 527 F.2d 1308 (5th Cir.), *cert. denied,* 429 U.S. 826 (1976). These cases, however, are concerned only with the distinction of an independent contractor and an employee. The question of whether the individuals in these cases rendered services with or without an expectation of compensation was not presented in any of these cases.

II. The District Court Improperly Disregarded The Voluntary Nature Of The Associates' Work Because Some Of The Work Was Done In Activities Customarily Considered "Commercial".

The Secretary's argument against placing the volunteer label on each associate seems to find itself grounded in the fact that the various associates worked in the Foundation's "businesses". (Resp. Br. 23, 25, 26, 27, 28, 29.) This Court, however, should not disregard the voluntary nature of the associates' work simply because some of it was performed in activities which may be considered "commercial". The cases of *Walling v. Portland Terminal Company, supra; Rogers v. Schenkel, supra;* and *Turner v. Unification Church, supra,* illustrate that the Courts look to the intent of the worker and not the nature of his work in determining whether he is a volunteer or employee.

III. The Petitioner, The Tony And Susan Alamo Foundation, Should Not Have Been Found An "Enterprise" As Defined By The Fair Labor Standards Act Since It Is, And At All Times Revelant Hereto Was, A Non-Profit Religious Organization Exclusively Created And Operated For Religious Purposes.

The Secretary argues that the Foundation's activities are performed for a "business purpose". This argument is contrary to the District Court's finding that the Foundation is "a corporation organized and operated exclusively for religious purposes. . . ." (Appendix A, App. 2.)

Purportedly in support of his argument, the Secretary quotes the following *portion* of 29 CFR 779.214: "[a]ctivities of eleemosynary, religious, or educational organizations may be performed for a business purpose". (Resp. Br. 18.) He fails, however, to recite the pertinent part of this regulation, which provides:

> However, the non-profit educational, religious, and eleemosynary activities will not be included in the enterprise unless they are of the types which the last sentence of section 3(r), as amended in 1966, declares shall be deemed to be performed for a business purpose. Such activities were not regarded as performed for a business purpose under the prior Act and are not so considered under the Act as it was amended in 1966 except for those activities listed in the last sentence of amended section 3(r). (29 CFR 779.214.)

The last sentence of section 3(r) of the Fair Labor Standards Act deems various activities to be performed for a business purpose, however, with the exception of a school, none of the activities listed in this section are performed by the Foundation. Thus, from the Secretary's own regulations, the Foundation is not an enterprise, other than perhaps in its school activity only.

The Secretary also argues that the tax-exempt status of the Foundation does not require an exclusion from the Act. He goes further and states if a tax-exempt organization carries on business for a "business purpose", the organization is covered. Assuming *arguendo,* it should be noted that the Foundation has not only secured and maintained a 501(c) (3) tax exemption, but it has also received recognition of the Internal Revenue Service (under its close scrutiny) that *none* of its activities are "unrelated trade or businesses" as defined by Section 512 of the Internal Revenue Code. Thus, the so-called "businesses" of the Foundation have been found by the Internal Revenue Service to be services related and connected with the religious nature of the Foundation. (J.A. 93, 94.) Certainly, these facts are more than mere "subjective consideration of religious motivation" as suggested by the Secretary. (Resp. Br. 22.)

Senate and House reports on the 1961 legislation stated that "[e]leemosynary, religious, or educational and similar activities" of non-profit organizations are "not included in the term 'enterprise'" because "[s]uch activities performed by non-profit organizations are not activities performed for common business purpose". (H.R. Rep. 75, 87th Cong., 1st Sess (1961); S. Rep. 145, 87th Cong. 1st Sess. 41 (1961).)

Accordingly, the petitioner Foundation is not an "enterprise engaged in commerce or in the production of goods for commerce" within the meaning and definition of Section 3(s) of the Act. (29 U.S.C. § 203(s).)

IV. The Application Of The Fair Labor Standards Act To The Petitioner Foundation And The Individual Petitioners Is In Violation Of The Free Exercise Of Religion Clause Of The First Amendment To The United States Constitution.

Many times, this Court has recognized that the First Amendment has built a "wall of separation" between Church and State. Though the "wall of separation" between permissible and impermissible intrusion of the State into matters of religion may blur, or become indistinct, or vary, it does and must remain high and impregnable. *McClure v. Salvation Army*, 460 F. 2d 553, 556 (5th Cir. 1972). In *Everson v. Board of Education*, 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711 (1947), it was said, "That wall must be kept high and impregnable. We could not approve the slightest breach." (67 S. Ct. at 513.) Only in rare instances, where a "compelling state interest" is shown to exist, can a court uphold state action which imposes even an "incidental" burden on the free exercise of religion. In this extremely sensitive constitutional area "only the gravest abuses, endangering paramount interest, give occasion for permissible limitation". *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963).

The Secretary has previously suggested that the application of the Act does not prevent the associates from donating their income back to the Foundation.[4] If such is the case, then what is the grave abuse presented in the case.

The three representative associates were clear in describing their beliefs and reasons for their deep rooted concern in being *forced* to accept a wage for work they consider to be for the Lord Jesus Christ. (J.A. 49, 59, 73, 79, 90.)

If the associates do not desire "wages" and since they could, and most assuredly would, simply donate their "wages" back to the Foundation, one must wonder what paramount interests are endangered which justify the Secretary's intervention.

Restrictions on the free exercise of religion are allowed only when it is necessary "to prevent grave and immediate danger to interest which the state may lawfully protect". *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963). To hold that the present case involves a grave and immediate danger is to narrowly construe the First Amendment's Free Exercise of Religion Clause.[5]

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[4]This is also suggested by the American Civil Liberties Union in its Amicus Curiae Brief. (Am. C. Br. 8,9.)

[5]In the Motion for Leave to File and Brief Amicus Curiae of the American Civil Liberties Union in Support of Respondent, it is suggested that the petitioners "may lack standing" to advance the religious rights of the Foundation's associates. (See, Motion For Leave to File and Brief Amicus Curiae, p. 7.) The petitioners remind this Court that the petitioner, Larry La-

(Continued on the next page)

These associates became connected with the Foundation out of desire "to serve the Lord", "to become evangelists", or "to become pastors". (J.A. 94.) Their services with the Foundation are rendered in furtherance of these desires. Likewise, the Foundation's purpose (i.e., to spread the Gospel) is fulfilled through the efforts of the associates. The associates are the ministers of the Foundation's religious beliefs and doctrines. The application of the Act to them *directly* affects their relationship with the Foundation and with its ministry. The Secretary proposes to force them to accept wages for their services, which is contrary to their religious beliefs and "vexing" to their souls.

Surely, the Secretary, in good conscience, cannot say that the associates have not clearly stated the basis for their objection to their being foreed to accept a wage for religious service. Just as a Sunday School teacher would be distressed upon being advised that he must be paid for religious teaching, so are the associates distressed. As stated in the Gospel according to Matthew: "[F]reely ye have received, freely give. Provide neither gold nor silver, nor brass for your purses, nor scrip for your journey. . . ." Matthew 10:8-10. It is also said: "Therefore take no thought, saying, What shall we eat? or, What shall we drink? or, Wherewithal shall we be clothed? . . . But seek ye first the kingdom of God and his righteousness. . . ." Matthew 6:31, 33. The associates are sincerely trou-

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Rouche, is an associate of the Foundation (Vol. I, pp. 54, 55 and Pet. App. 6) and, consequently, has standing to assert the positions set forth in the Petitioners' Brief on the Merits. Furthermore, the question of standing has not been asserted by the Secretary of Labor in this Court or in any Courts below. (See Resp. Br. p. 33.)

bled over the Secretary's intrusion into their religious desires.

The Secretary argues further that "even if the associates 'desire no compensation for their labor at the Foundation' (Pet. Br. 30), this would not mean, as petitioners imply, that to accept wages in prescribed amounts is contrary to the associates' 'religious convictions'." (Resp. Br. 35.) He goes on to say: "Not desiring additional compensation is not the same thing as believing that receipt of additional compensation would violate their faith." (Resp. Br. 35-36.) Petitioners' objection has been clearly stated in the past and the Secretary's expressed misunderstanding is unjustified. The associates of the Foundation have continuously objected to being forced to accept *any* wage for services which they consider the "work of God". (J.A. 77.) As stated by one of the representative associates: "I believe it would be offensive to me to even be considered to be forced to take a wage. It would be an absolute offense to me." (J.A. 62.) With regard to being forced to receive a wage, another associate stated: "It would defeat my whole purpose. I have given my life to God, and Jesus had died for me. I owe him my life." (J.A. 79.) The associates have undoubtedly presented their position that the receipt of any wage would violate their religious beliefs. To argue that being forced to receive a wage under these circumstances is not an infringement protected by the First Amendment Free Exercise of Religion Clause is absurd.

In the case of *Follett v. Town of McCormick, S.C.*, 321 U.S. 573, 64 S. Ct. 717 (1984), this Court found a town ordinance requiring agents selling books to pay a license fee of $1.00 per day or $15.00 per year to be unconstitutional as an improper restriction on freedom of religion.

In applying the nearsighted reasoning of the Secretary's argument to the case of *Follett,* one would only find a requirement to pay a license fee.

The Secretary also states that the imposition of the provisions of the Act upon the Foundation and its associates would not "infringe upon the associates' 'right to live in the religious setting of the Foundation' ". (Resp. Br. 35.) Such, however, is not the case. The Foundation was incorporated, and is operated and structured as a religious and charitable organization. Those who become associated with the Foundation do so out of religious motives. (J.A. 94.) To label the Foundation as an employer and the associates as employees would destroy the very structure of this organization and would require liquidation of all of the Foundation's assets including the associates' homes, schools, child nursery, and church buildings. (R. Vol. 200, J.A. 93, 94.)[6]

[6]The Secretary states: "If the petitioners can show on remand that the benefits they provide the associates are in fact the equivalent of the minimum wage, then they will be found in compliance with Section 6 of the Act." (Resp. Br. 39.) The trouble with the Secretary in this regard is that he attempts to eliminate or minimize the value of any benefit received by the associates. Even the District Court became distressed over the Secretary's approach in regard to the valuation of benefits. As stated by the District Court to trial counsel for the Secretary: "I think the thing that really distresses me about the Secretary's attitude about this case is, you know, if somebody's father has a heart attack over in Nashville and they give them a plane ticket over there to visit his father, I think the Foundation ought to get credit for that. . . . But, you know, to get up here and take the position that when the Foundation provides transportation to the hospitals and flying people around, and things like that, they're not allowed any credit for that just seems to me like there's not any equity in that. . . ." (R. Vol. VI pp. 41-42.) Furthermore, as noted in the District Court's Memorandum and Order (Appendix A, App. 12), for the entire year of 1976, they gave no credit for housing or feeding any minor children in the Foundation and allowed only $12.05 per month as credit for board for one adult associate and $38.82 per month as credit for lodging.

V. Application Of The Fair Labor Standards Act To The Petitioners Is Violative Of The Establishment Clause Of The First Amendment To The United States Constitution.

Contrary to the Secretary's position, the relationship sought to be regulated is not essentially secular. As set forth in the District Court's amended Order (Appendix A, App. 42-45), the Foundation is not only "restrained and enjoined" from withholding minimum wage and overtime compensation to the associates who worked "at any of the businesses" of the Foundation, but also to "*all* persons who have been associates of the Foundation". (Appendix A, App. 43-44.) (emphasis ours) Thus, the Foundation is required to pay minimum wage and overtime compensation to any associate regardless of the fact that such associate performed no work in the Foundation "businesses". Accordingly, this case involves more than a request to regulate "secular" activity.

VI. The Application Of The Fair Labor Standards Act To The Petitioner Is Violative Of The Equal Protection Component Of The Due Process Clause Of The Fifth Amendment To The United States Constitution.

In the Secretary's response to this point of the argument, he attempts only to distinguish the ACTION volunteer from the associate of the Foundation. No response is made to the unequal treatment between the associates of the Foundation from the individuals expressly exempt from the Act under Section 13 (29 U.S.C. § 213(a)).

The Secretary's attempted application of the Fair Labor Standards Act to the petitioners is an arbitrary action, and such bears no reasonable relation to the purpose sought to be achieved by the Act. Therefore, the application of the Act to the petitioners is violative of the

equal protection component of the Due Process Clause of the Fifth Amendment.

CONCLUSION

Petitioners respectfully request this Court to reverse the decisions of the United States Court of Appeals for the Eighth Circuit and the United States District Court for the Western District of Arkansas.

Respectfully submitted,

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